

Message Text

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ORIGIN EB-07

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FM SECSTATE WASHDC

TO AMEMBASSY WELLINGTON PRIORITY

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E.O. 11652: N/A

TAGS: EAIR, NZ

SUBJECT: CIVAIR - GNZ ORDERED AIR FARES

REF: WELLINGTON 3184 AND 3263 AND STATE 259532

1. EMBASSY IS REQUESTED TO TAKE UP WITH APPROPRIATE GNZ
AUTHORITIES PROBLEM CAUSED BY PRECIPITATE CANCELLATION OF
CERTAIN PROMOTIONAL FARES EFFECTIVE OCT 31, 1975. GNZ
ORDER DATED OCTOBER 20 WAS ONLY RECEIVED ON OCTOBER 28 BY
DESIGNATED US CARRIER. AS FARES IN QUESTION MAY INCLUDE
US-NZ SECTORS IN OUR OPINION THEY FALL WITHIN COMPASS OF
US-NZ AIR TRANSPORT SERVICES AGREEMENT, AND THEREFORE WE
WOULD EXPECT THAT GNZ ACTION IMPLEMENTING THEM WOULD BE
CONSISTENT WITH PROVISION THAT AGREEMENT.

2. FOLLOWING MAY BE DRAWN ON FOR USE IN NOTE TO FONOFF
AND/OR IN LETTER TO NZ MINISTRY OF TRANSPORT AS EMBASSY
CONSIDERS APPROPRIATE.

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3. IN 1964 THE US AND NZ ENTERED INTO AN AIR TRANSPORT SERVICES AGREEMENT SUPERSEDING THE AGREEMENT OF DEC 3, 1946. IN THE RATE ARTICLE OF THE 1964 AGREEMENT THERE WERE INCORPORATED TWO SIGNIFICANT CHANGES.

A. THE BILATERALLY AGREED PROCEDURES WERE MADE APPLICABLE TO RATES CHARGED BY AN AIRLINE OF ONE PARTY TO OR FROM POINTS IN THE TERRITORY OF THE OTHER PARTY. UNDER THE 1946 AGREEMENT THE PROCEDURES APPLIED ONLY TO RATES CHARGED BETWEEN THE TWO COUNTRIES.

B. THE RIGHTS OF THE AIRLINES AND THE GOVERNMENTS WITH RESPECT TO EXISTING RATES WERE PRESCRIBED. IN THE EARLIER AGREEMENT THE ARTICLE DEALT EXPRESSLY ONLY WITH PROPOSED RATES.

4. IN PROPOSING THESE CHANGES, WHICH WERE ACCEPTED BY THE GNZ, THE INTENTION WAS TO MAKE CLEAR THAT A GOVERNMENT COULD REQUIRE FILING AND, IN THE LAST ANALYSIS, COULD DISAPPROVE RATES CHARGED BY CARRIERS OF ANOTHER COUNTRY NOT ONLY BETWEEN THE TWO COUNTRIES BUT ALSO BETWEEN ITS TERRITORY AND ALL OTHER POINTS. AN IMPORTANT REASON FOR THIS ACTION WAS TO MAKE THE PROCEDURES FOR FILING NOTICES OF DISSATISFACTION, PROVISION FOR CONSULTATION, ETC., APPLICABLE NOT ONLY TO RATES BETWEEN THE TWO COUNTRIES BUT TO OTHER RATES AS WELL. THIS EXTENSION OF PROCEDURAL REQUIREMENTS WAS OF IMPORTANCE TO THE CARRIERS FOR IT MEANT THAT ONCE THEY FILED NEW RATES THEY WOULD KNOW AT LEAST FIFTEEN DAYS BEFORE THE PROPOSED DATE OF EFFECTIVENESS WHETHER THEY WOULD BE ABLE TO USE THEM. THE 1946 AGREEMENT HAD PROVIDED THIS PROTECTION ONLY AS TO RATES CHARGED BETWEEN THE TWO COUNTRIES AND CASES HAD ARISEN WHERE CARRIERS HAD NOT KNOWN UP TO THE DATE OF PROPOSED EFFECTIVENESS WHETHER OTHER RATES WOULD BE PERMITTED TO BECOME EFFECTIVE.

5. THE SUPERSEDED RATE ARTICLE WAS ALSO CONSIDERED DEFICIENT IN THAT IT MADE NO EXPRESS PROVISION FOR DEALING WITH A SITUATION WHERE RATES, WHICH HAD BEEN FILED BY CARRIERS AND WHICH HAD BEEN ACCEPTED AS SATISFACTORY AT THE LIMITED OFFICIAL USE

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TIME THEY WERE FILED, BECAME WITH THE PASSAGE OF TIME UNSATISFACTORY TO ONE OF THE GOVERNMENTS. CLEARLY NO GOVERNMENT COULD COUNTENANCE THE INDEFINITE CONTINUANCE OF UNECONOMIC RATES BY A CARRIER WHICH REFUSED TO FILE NEW ONES. THE RIGHT OF A GOVERNMENT TO SUSPEND EXISTING RATES WAS CLARIFIED AND AT THE SAME TIME THE CARRIERS WERE PROVIDED PROTECTION FROM ARBITRARY ACTION. THIS WAS ACCOMPLISHED BY ESTABLISHING A PROCEDURE FOR NOTIFICATION

TO THE OTHER GOVERNMENT OF DISSATISFACTION WITH AN EXISTING RATE, PROVISION FOR CONSULTATIONS, IF DESIRED, AND A MINIMUM PERIOD OF SIXTY DAYS FROM THE DATE OF NOTIFICATION TO ENABLE THE CARRIER TO PREPARE FOR AN ORDERLY TRANSITION INCLUDING PREPARATION OF NEW RATE FILINGS AND DISSEMINATION TO AGENTS AND THE PUBLIC.

6. IT ACCORDINGLY APPEARS TO THE US GOVERNMENT THAT THE ACTIONS TAKEN BY THE GNZ TO CANCEL EXISTING TARIFFS TO NEW ZEALAND OVER ROUTES WHICH INCLUDE A US-NEW ZEALAND SECTOR MAY NOT BE CONSISTENT WITH THE PROCEDURAL PROTECTIONS INCORPORATED IN THE US-NZ AGREEMENT OF 1964. IT IS THEREFORE REQUESTED THAT THE GNZ AUTHORITIES CONSIDER APPROPRIATE MODIFICATIONS THEREIN WITH A VIEW TO PROVIDING AN ADEQUATE PERIOD IN WHICH THE US DESIGNATED CARRIER MAY MAKE ARRANGEMENTS IN CONFORMITY WITH THE US-NZ AGREEMENT AND THE ORDERS OF THE GNZ.

7. QUESTION OF RESPONSE ON COMMISSION PROBLEM WILL BE SUBJECT OF SEPTTEL. KISSINGER

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